IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

CRL.A.No. 288 of 1997()

CC.9/1995 of ENQUIRY COMMR. & SPL. JUDGE, TRIVANDRUM
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APPELLANT/PETITIONER:

VENUGOPAL,S/O.KOCHUKRISHNAN,
FORMERLY SENIOR ASSISTANT,
KERALA STATE CIVIL SUPPLIES CORPORATION,
DISTRICT DEPOT. PATHANAMTHITTA.

BY ADV. SRI.B.RAMAN PILLAI

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

CRL.APPEAL.NO.288 OF 1997 ()

Dated this the 7th day of March, 2007

J U D G M E N T

Appellant was the sole accused in Crl.A.No.19/1995. He was charged for the offences punishable under Section 13(2) read with Section 13(1)(c) of the Prevention of Corruption Act, 1988 and Sections 409, 468, 471 and 477-A of the Indian Penal Code.

2. The allegations against the accused was that while he was working as a Senior Assistant at the Pathanamthitta District Depot of Kerala State Civil Supplies Corporation from 26.7.1988 to 25.11.1988 he was entrusted with the custody of Palmolein oil and he was also in charge of Onam Market conducted from 21.8.1988 to 25.8.1988. While he was working so, he dishonestly forged a release order on 14.10.1988 in the name of A.R.D.No.88 on the basis of chellan No.2 dated 13.10.1988 for the purpose of cheating and he falsified the

accounts and by using forged release order as genuine, he misappropriated 2 barrels of palmolein worth Rs.6,992/-. It was further alleged that he has misappropriated provision goods and other commodities worth Rs.1,62,620.15 during the period from 4.9.1988 to 25.11.1988. He also misappropriated provision goods and other commodities worth Rs.16,973/- entrusted for sale at the Onam Market from 21.8.1988 to 25.8.1988. He misappropriated the accounts by forging documents. Trial court after the detailed consideration of the evidence held that allegations regarding misappropriation of provision goods worth Rs.1,62,620.15 during the period from 4.9.1988 to 25.11.1988 and misappropriation of provision goods worth Rs.16,973/- during Onam Market sale were not proved. The only allegation proved was regarding the removal of Palmolein worth Rs.6,992/- and he was found guilty under Section 13(2) read with Section13(1)(c) and (d) of the Prevention of Corruption Act, 1988 and Sections 409 and 477-A of the I.P.C. The State did not file any appeal regarding the findings that the accused is not guilty regarding the major allegations of misappropriation of provision goods. Appeal is filed against the conviction and sentence for the alleged

misappropriation of 2 barrels of palmolein worth Rs.6,992/- by committing the offence of criminal breach of trust and falsification of accounts. The case of the prosecution is that during the relevant time every month only one consignment, consisting of 2 barrels of palmolein oil can be given to an Authorised Retail Dealer (ARD). It is the allegation that accused had forged the release order on 14.10.1988 by forging chellan No.2 dated 13.10.1988 in the name of ARD No.88. It is the case of the prosecution that ARD No.88 had purchased 380 kg of palmolein oil (2 barrels) on 12.10.1988 for Rs.6,992/-. Two barrels (380 kg) of palmolein oil alone are to be sold to ARD 88 for October 1988 and that was sold as per Ext.P7(a) and therefore 2 barrels as per Ext.P4(d) sale was removed and by using forged chellan No.2 and thus misappropriated the value of Rs.6,992/-.

3. The prosecution relied on the evidence of PW1, Internal Audit Officer who marked main documents, PW5, authorised ration dealer of ARD 200 and PW6, authorised ration dealer of ARD 199 and deposed that they have not taken delivery of 2 barrels of palmolein on 14.10.1988 by using

chellan No.2 dated 13.10.1988. Unfortunately the prosecution did not examine the retail dealer of Shop No.ARD 88. Prosecution in this case ought have examined the ration dealer of Shop No.ARD 88 to show that he has received 2 barrels of palmolein oil on 12.10.1988 by using chellan No.2 and he has not received on 14.10.1988 on the basis of forged chellan No.2. Main evidence was lacking. I also note that stock register produced and verification report produced did not show shortage of 2 barrels of palmolein oil but that showed shortage of other provision goods and none of the prosecution witnesses stated that the 2 barrels of palmolein oil were missing from the store for which no amount was received. If 2 barrels of palmolein was removed without payment, stock register would reflect shortage. Here there is no case that any barrels were found short. Even though chellan No.2 dated 13.10.1988 which was alleged to be a forged chellan was produced, original of chellan No.2 for which goods were alleged to have released on 12.10.1988 to ARD 88 was not produced. According to the prosecution, it was missing. Even the counterfoils were also not produced. There is no possible evidence that by using chellan No.2 palmolein was released to

ARD 88 on 12.10.1988. Admittedly, according to the prosecution no remittance was made for the palmolein removed on 14.10.1988. If no remittance was made, there should have been shortage in the stock register. But there is no case that there is shortage of stock regarding palmolein oil. According to the accused only 2 barrels were sold to ARD 88 for October 1988. The alleged released chellan No.2 dated 12.10.1988 is not produced. Investigating Officer also stated that he did not enquire how the above chellan was missing. To the specific question PW14 answered as follows:

> "PW1നെ കണ്ട ു ചോദിച്ചപ്പോൾ എ ആർ ഡി നംമ്പർ 88നു 12.10.1988ലെ ഇഷ്യൂനെ ആസ് പദമായ ചെല്ലാൻ ബാങ്കിൽ കാണാനില്ല എന്ന് പറഞ്ഞിട്ട ുണ്ട്. അത് എങ്ങിനെ നഷ്ടപ്പെട്ട ു എന്ന് ബാങ്കിൽ പോയി അന്വേഷിച്ചില്ല."

Exts.P4(a), P4(b) and P4(c) entries also show that there were corrections. Even the trial court judge found that there is no supporting evidence on record to show that accused had committed any forgery or forged documents were used by the accused as genuine and no cheating was also committed by the accused as he was acquitted for offences punishable under

Sections 468 and 471 of the Indian Penal Code. In the absence of the evidence that there is no shortage of palmolein in the stock of the society and the finding that the accused has not forged the documents and no cheating is involved complied with the fact that even though alleged original chellan No.2 is not produced, the retail dealer ARD No.88 also was not examined to show that he has taken delivery on 12.2.1988. Prosecution failed to prove the basis of charges. In the above circumstances, I am of the view that the allegations against the petitioner with regard to the 2 barrels of palmolein oil are not proved beyond reasonable doubt. Hence conviction and sentence is set aside and appeal is allowed accordingly.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

O.P.NO. OF 2006 ()

J U D G M E N T

1th January, 2007